

No. **08-0404**

**Official Order
of the
Commissioner of Insurance
of the
State of Texas
Austin, Texas**

Date: MAY 02 2008

Subject Considered:

**Fiscal Year 2008 Research Agenda for the Workers' Compensation
Research and Evaluation Group at the Texas Department of Insurance**

General Remarks and Official Action Taken:

On this day came on for consideration by the Commissioner of Insurance (Commissioner), a proposal for the Fiscal Year (FY) 2008 Research Agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (Department). Labor Code §405.0026 requires the Commissioner to adopt an annual research agenda for the REG. Labor Code §405.0026 also requires the REG to publish the proposed research agenda in the *Texas Register* for the Commissioner's review and approval and requires the Commissioner to accept public comments and to hold a public hearing on the proposed research agenda if requested by interested persons.

In prior years, the REG utilized a set of criteria, including the availability of data and the applicability of research findings to multiple stakeholder groups, to

evaluate research project suggestions from system stakeholders and legislative offices. Because of the number of legislatively-mandated research projects that must be completed in 2008 and the REG's available resources, the REG did not solicit additional research suggestions from stakeholders prior to the publication of the proposed FY 2008 Research Agenda. However, in January 2008, the REG distributed a draft of the proposed FY 2008 Research Agenda to legislative offices and the Division of Workers' Compensation for their review and input prior to the publication of the proposed FY 2008 Research Agenda in the *Texas Register* and on the Department's website.

The proposed FY 2008 Research Agenda was published for public review and comment on the Department's website and in the February 1, 2008, issue of the *Texas Register* (33 TexReg 1006).

The Department received comments regarding the proposed research agenda from the Insurance Council of Texas, the Texas Association of Responsible Nonsubscribers, and two members of the public. The comments and the Department's responses are as follows:

Comment: One commenter recommended that the REG analyze the effect of the 28 TAC 129.6 on limiting bona fide offers of employment as part of the return-to-work project, FY 2008 Research Agenda Item #4 (an annual update of return-to-work outcomes using data from the Texas Workforce Commission). The

commenter stated that 28 TAC 129.6 is so restrictive that injured workers and their representatives use this rule to avoid returning to work. The commenter recommended that the return-to-work project #4 include an analysis of the number of cases that go through indemnity dispute resolution and the percentage of these cases in which a bona fide offer of employment was made. The commenter further recommended that the project include research on whether it is the rule as written or its interpretation and application that makes it so restrictive. The commenter also suggested that the project include an examination of other barriers by the Division of Workers' Compensation that prevent employees from returning to work.

Agency Response: The Department appreciates the project suggestions. However, the REG does not have the resources to conduct the suggested research during FY 2008 in addition to the legislatively-mandated research projects. The REG, however, will consider these project suggestions in developing the FY 2009 Research Agenda.

Comment: One commenter recommended conducting ongoing research on the number of employers who participate and do not participate in the Texas workers' compensation system from year to year using existing workers' compensation policy data and workforce payroll tax data rather than employer survey data. The commenter stated that the Department does not keep survey information from one year to the next, and that determining whether an individual

employer who subscribed to the Texas system in 2004 was still a subscriber in 2006 cannot be determined through the survey method.

Agency Response: The FY 2008 Research Agenda Item #5 (an update of the 2006 study to estimate employer participation in the Texas workers' compensation system) is the continuation of a study that the state has periodically conducted since 1993 to estimate employer participation in the Texas workers' compensation system. The Department appreciates the commenter's suggestion to utilize workers' compensation policy and state payroll tax data to produce participation estimates in lieu of the current employer survey method. The Department recognizes that there are several scientifically accepted methods for collecting this type of information; however, changing the study methodology significantly would alter the comparability of employer participation rates over time. The REG currently utilizes state payroll tax information collected by the Texas Workforce Commission to develop the survey sample for the employer participation survey. Because of the ongoing efforts of the Department's Division of Workers' Compensation to update the workers' compensation policy data as well as the need to externally validate the completeness and accuracy of this data, the REG has determined that for the purposes of the FY 2008 employer participation project, the use of alternate data sources is not appropriate at this time.

Comment: One commenter stated that they will not provide comments on the survey instrument as it relates to FY 2008 Research Agenda Item #5 because, according to the commenter, more than a few changes are needed to provide objective, high quality data to the legislature and the public at large as it relates to subscribing and nonsubscribing employers and their employees.

Agency Response: FY 2008 Research Agenda Item #5 is an update of the 2006 study to estimate employer participation in the Texas workers' compensation system. The core elements of this employer participation study have not changed significantly since the first study was conducted in 1993, and all of the core elements of this study (including the estimation of employer participation and employee coverage in the Texas workers' compensation system, the types of income and medical benefits provided by nonsubscribing employers, the reasons why employers choose to participate or not participate in the system, and the satisfaction of employers who choose to participate or not participate in the system) were included as a result of requests for this information by policymakers and system participants. Maintaining the core elements of this study is key to ensuring the comparability of employer and employee participation rates in the Texas workers' compensation system over time. However, each time this employer participation study has been conducted, the REG and its predecessors, the ROC and the Texas Workers' Compensation Research Center, have requested input from affected stakeholder groups on the

content of the survey and, as a result of this input; have made minor changes to the survey instrument each time.

Comment: One commenter recommended that FY 2008 Research Agenda Item #5 should include an analysis of why employers are subscribing or not subscribing to workers' compensation insurance, including employer attitudes regarding how the Division of Workers' Compensation regulates and administers the Texas workers' compensation system.

Agency Response: The REG currently includes questions in the employer survey to identify the primary reasons why employers choose to participate or not participate in the workers' compensation system, including their perceptions regarding the overall administration of the system. A copy of the results from the 2006 survey is at:

http://www.tdi.state.tx.us/reports/wcreg/documents/Employer_Participati.ppt.

The REG will update these findings based on the 2008 survey results.

Comment: One commenter recommended including in FY 2008 Research Agenda Item #6 (an update of the FY 2007 analysis of the frequency, type, and outcome of peer reviews performed on behalf of insurance carriers using the results of the Department's Division of Workers' Compensation's peer review data call) an analysis of how the Division of Workers' Compensation dispute resolution staff treat or give weight to the opinions of peer review doctors.

Agency Response: The Department appreciates the suggestion. However, the REG does not have the resources to conduct the suggested research during FY 2008 in addition to the legislatively-mandated research projects. The REG, however, will consider these project suggestions in developing the FY 2009 Research Agenda.

Comment: One commenter stated that they have elected not to request a public hearing on the FY 2008 Research Agenda as it might delay the REG's efforts to proceed with the employer survey to estimate employer participation in the Texas workers' compensation system.

Agency Response: The Department appreciates the comment.

Comment: One commenter expressed support for the proposed FY 2008 Research Agenda. The commenter acknowledged that the items included on the proposed FY 2008 Research Agenda are required by statute and will involve all of the REG's research resources. The commenter suggested two items for inclusion on the FY 2009 Research Agenda. The commenter suggested a project to determine the impact of the 2008 Medical Fee Guideline, Inpatient Hospital Fee Guideline, and Outpatient Hospital Fee Guideline on system medical costs and injured employee access to doctors. The commenter also

suggested a project to study the impact of the amendment of the Texas Labor Code on outcomes, frequency, and total number of medical disputes.

Agency Response: The Department appreciates the comment and will consider the suggestions in developing the FY 2009 Research Agenda.

After considering the proposed research agenda, the comments received, and the Department's responses to those comments, the Commissioner has determined that the following research agenda is within the authority conferred by Labor Code §405.0026. The Commissioner has further determined that the following research agenda will effectively facilitate the comprehensive accomplishment of the statutory mandate set forth in Labor Code §405.0025, that the REG conduct professional studies and research relevant to the cost, quality, and operational effectiveness of the workers' compensation system and report its findings to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the members of the Legislature.

FY 2008 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance

1. Completion and publication of the second edition of Workers' Compensation Health Care Network Report Card (required under Insurance Code §1305.502 and Labor Code §405.0025); report due in September 2008.
2. An analysis to assess the impact of certified workers' compensation health care networks on both the cost and the quality of medical care provided to injured workers, including a comparison of medical care provided prior to and after the implementation of networks, as well as a comparison of medical care

provided to injured workers in and outside of networks (required by Labor Code §405.0025(c)); report due on December 1, 2008.

3. Continuing examination of the frequency of Workers' Compensation claims for both employers and employees participating in networks.

4. An annual update of return-to-work outcomes for injured workers using data from the Texas Workforce Commission (Sunset Advisory Commission Management Recommendation).

5. An update of the 2006 study to estimate employer participation in the Texas workers' compensation system (required by Insurance Code Article 5.55(e) and Labor Code §405.0025); report due on December 1, 2008.

6. An update of the FY 2007 analysis of the frequency, type, and outcome of peer reviews performed on behalf of insurance carriers using the results of the Department's Division of Workers' Compensation's peer review data call (to assess the impact of HB 1006 and HB 2004, 80th Legislature).

7. Assisting the Department's Division of Workers' Compensation with data analysis support for the development of a closed pharmaceutical formulary and fee guideline required under Labor Code §408.028(b) and (f).

8. Assisting the Department's Division of Workers' Compensation with an examination of whether injured employees have reasonable access to surgically implanted, inserted, or otherwise applied devices or tissues, and investigate whether reimbursement rates or any other barriers exist that reduce the ability of an injured employee to access those medical needs (required by Labor Code §413.011(i)).

9. Assisting the State Office of Risk Management (SORM) with its efforts to:

(a) collect and analyze data from each state agency regarding lost time, including sick and annual leave used by an injured employee (required by Labor Code §412.0126); and

(b) analyze options to prepare state agencies for catastrophic claims, including a study of whether the state should establish a state employee workers' compensation catastrophe fund outside of the state treasury and/or purchase catastrophe reinsurance (required by Labor Code §412.0129); report due on September 1, 2008).

10. An analysis of the adequacy of income benefits paid to injured workers as a result of their work-related injuries.

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IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the FY 2008 Research Agenda for the Workers' Compensation Research and Evaluation Group at the Texas Department of Insurance, as specified herein, is hereby approved and adopted, effective immediately.

AND IT IS SO ORDERED.

TEXAS DEPARTMENT OF INSURANCE

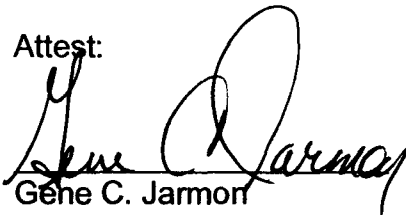

MIKE GEESLIN
COMMISSIONER OF INSURANCE

RECOMMENDED BY:



Amy Lee
Director, Workers' Compensation Research and Evaluation Group

Attest:


Gene C. Jarmor
General Counsel and Chief Clerk

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